

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matters of)	
)	
DIGIS, LLC)	File Nos. 0006242860, 0006242783
)	
Applications for Modifications of Fixed Point-to-Point Microwave Licenses, Call Signs WQJL989 and WQJL990 at Ogden, UT)	
)	
TXOX COMMUNICATIONS, LLC)	File Nos. 0006321177, 0006321179, 0006321186
)	
Applications for Modifications of a Fixed Point-to-Point Microwave Licenses Call Signs WQJF811, WQJY924 and WQJY925 at Ogden, UT)	
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MEMORANDUM OPINION AND ORDER

Adopted: December 17, 2014

Released: December 18, 2014

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address a microwave frequency coordination dispute between Digis, LLC (“Digis”) and TXOX Communications, LLC (“TXOX”). Specifically, we conclude that TXOX’s Private Operational Fixed Microwave Service (POFS) Point-to-Point license Station WQJF811 was automatically forfeited on June 3, 2013 because TXOX removed its facilities from its authorized location for more than 30 days. Accordingly, we grant an objection Digis filed against applications filed by TXOX to modify its POFS licenses for Stations WQJF811, WQJY924 and WQJY925. We also deny TXOX’s petition to deny Digis’ applications to modify POFS Stations WQJL990 and WQJL989 because the TXOX petition assumes the validity of its license for Station WQJF811, and we direct processing of Digis’ applications.

II. BACKGROUND

2. Part 101 includes the Private Operational Fixed Service (POFS)¹ and the Common Carrier Operational Fixed Service.² The Commission established part 101 to unify the Commission’s rules governing all microwave services.³ Section 101.65(a) of the Commission’s rules regarding non-operation of facilities for more than 30 days applies to both POFS and the Common Carrier Operational Fixed Service.⁴

¹ See Part 101, Subpart H.

² See Part 101, Subpart I.

³ See Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, WT Docket No. 94-148, *Report and Order*, 11 FCC Rcd 13449 (1996).

⁴ See 47 C.F.R. § 101.65(a); Orange Crush Recycle, LP, *Order*, 24 FCC Rcd 10987, 10990-10991 ¶ 11 (WTB BD 2009).

3. The Commission's licensing regime for these two services also requires frequency coordination and the filing of an application for each microwave link or path containing detailed information concerning the proposed operation.⁵ In order to complete frequency coordination, an applicant must give prior notice to nearby licensees and other applicants for licenses of the proposed applicant's operations, make reasonable efforts to avoid interference and resolve conflicts, and certify to the Commission that the proposed operation has been coordinated.⁶ Once the applicant has completed frequency coordination, the applicant must file an application for authorization with the Commission, specifying the latitude and longitude of the transmitter to be used to an accuracy of one second.⁷

4. On August 22, 2008, the Wireless Telecommunications Bureau ("Bureau") issued TXOX a license to operate POFS Station WQJF811 from the Commerce Building in Ogden, Utah (coordinates 41-11-16.1 North Latitude, 111-57-08.7 West Longitude).⁸ The license for Station WQJF811 was modified four times to add additional paths or modify existing paths.⁹ On January 31, 2011, the Bureau modified Digis' license for Common Carrier Fixed Point to Point Microwave Station WQJL990 to authorize operation from the Commerce Building (coordinates 41-11-15.9 North Latitude, 111-57-09.7 West Longitude).¹⁰ That license was subsequently modified ten times to add additional paths, delete existing paths, or modify existing paths.¹¹

5. The microwave frequency coordination dispute between TXOX and Digis stems from a series of events beginning in early 2013. TXOX and Digis offer different versions of the facts. According to TXOX, in early 2013, TXOX and Digis both were operating their equipment from the rooftop of the Commerce Building on a month-to-month basis.¹² Digis claims it had a longer-term lease because a company it bought had a lease for the Commerce Building.¹³ According to TXOX's President, Douglas J. Clark, in February 2013, the Commerce Building's new owner informed TXOX that because it did not have a current lease, it would need to remove all of its equipment from the building's rooftop, where TXOX was licensed to operate.¹⁴ According to Digis, it was told that the owner of the Commerce Building approached TXOX about negotiating a lease, but TXOX refused to pay the requested rent and decided to leave the building.¹⁵ TXOX subsequently negotiated a long term lease with the owner of the Executive Building, a building "less than 500 feet apart" from its licensed location.¹⁶ In its application to

⁵ See 47 C.F.R. §§ 101.21(f), 101.103.

⁶ See 47 C.F.R. § 101.21(f).

⁷ 47 C.F.R. § 101.103(d)(2)(ii).

⁸ See File No. 0003494607 (filed July 7, 2008, granted Aug. 22, 2008).

⁹ See File Nos. 0003709280 (filed Jan. 20, 2009, granted Feb. 24, 2009), 0003968676 (filed Sep. 18, 2009, granted Oct. 23, 2009), 0005077323 (filed Feb. 15, 2012, granted Apr. 17, 2012), 0005705667 (filed Mar. 25, 2013, granted June 3, 2013).

¹⁰ See File No. 00036552321 (filed Nov. 19, 2008, granted Jan. 12, 2009).

¹¹ See File Nos. 0004012061 (filed Oct 29, 2009, granted Jan. 13, 2010), 000499080 (filed Nov. 18, 2008, granted Jan. 31, 2011), .0004687742 (filed Apr. 12, 2011, granted June 10, 2011), 0004775248 (filed June 21, 2011, granted Aug. 16, 2011), 0004838920 (filed Aug. 15, 2011, granted Oct. 12, 2011), 0005365936 (filed Aug. 24, 2012, granted Mar. 14, 2013), 0005855239 (filed July 11, 2013, granted Sep. 5, 2013), 0005982775 (filed Oct. 24, 2013, granted Jan. 2, 2014), 0006188143 (filed Mar. 6, 2014, granted May 2, 2014), 0006272369 (filed May 6, 2014, granted June 30, 2014).

¹² Letter from Douglas J. Clark, President TXOX Communications, Inc. (filed Sep. 11, 2014) (Clark Letter) at 1.

¹³ See Letter from Troy Blair, Network Infrastructure Manager, Digis LLC Utah Division to Office of the Secretary, Federal Communications Commission (filed Oct. 1, 2014) (Blair Letter) at 1.

¹⁴ Clark Letter at 1-2.

¹⁵ Blair Letter at 1-2.

modify the license for Station WQJL811 to move to the Executive Building, the coordinates of the new location are listed as 41-11-16.4 North Latitude, 111-57-02.9 West Longitude.¹⁷

6. At the time of the move, TXOX did not file an application to modify the license for Station WQJL811 to authorize operation at the Executive Building. Mr. Clark reports that TXOX relied on advice from its frequency coordinator, Brad Youngblood of Micronet Communications, Inc. (“Micronet”) that “you get 1000 feet variance from the coordination that is specified” on the license.¹⁸ Mr. Youngblood denies having any conversation with Mr. Clark in 2013.¹⁹ On May 3, 2013, TXOX moved its licensed links to the rooftop of the Executive Building, leaving the links out of service for, at most, 4 hours.²⁰ According to Mr. Clark, the links have been in constant operation since.²¹

7. On March 10 2014, Digis, through its frequency coordinator, Micronet, issued a prior coordination notice (PCN) for a path.²² Both TXOX and Digis agree that the new path would directly interfere with TXOX’s operations under Station WQJL811.²³ In a series of letters exchanged between Comsearch and Micronet between March 31, 2014 and April 9, 2014, Comsearch asserted that TXOX’s paths were still operational, its interference objection to Digis’ PCN unresolved and TXOX would object to any FCC filing that did not resolve its interference concerns.²⁴ Micronet argued that TXOX had forfeited its license by removing its equipment from the licensed site.²⁵

8. Mr. Clark states that his new frequency coordinator, Comsearch, subsequently informed him that TXOX would need to re-coordinate all of its licensed links as a result of moving its equipment from the Commerce Building to the Executive Building, in order to comply with Commission rules, contradicting the advice Mr. Clark claims he received from Micronet.²⁶ On April 10, 2014, Comsearch issued a PCN, on TXOX’s behalf, to relocate the WQJF811 transmitter to the Executive Building site.²⁷ On April 15, 2014, Micronet, on Digis’ behalf, forwarded potential interference cases to Comsearch.²⁸ Comsearch replied on April 18, 2014 stating that its “PCN was to make minor changes to the existing TXOX system that moved across the parking lot.”²⁹ Micronet responded on April 24, 2014 arguing “this

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¹⁶ Clark Letter at 2.

¹⁷ For the purposes of this order, we are relying on TXOX’s FCC license and its modification application for the coordinates of Station WQJF811. We note that in Mr. Clark’s September 10, 2014 letter, he stated that the licensed location at the Commerce Building of TXOX’s equipment was 41.187628, -111.952312 and the location at the Executive Building requested in the modification application was 41.187861, -111.950891.

¹⁸ Clark Letter at 2.

¹⁹ See Letter from Brad Youngblood, Micronet Communications, Inc. to Office of the Secretary, Federal Communications Commission (filed Oct. 1, 2014) (Youngblood Letter) at 1.

²⁰ Clark Letter at 2.

²¹ Clark Letter at 2.

²² Micronet Communications, Inc., File Number M1406608 (Mar. 10, 2014).

²³ Compare Clark Letter at 2 and Micronet Communications, Inc. Petition to Deny (filed June 26, 2014) (Micronet Petition to Deny TXOX) at 1.

²⁴ Comsearch Petition to Deny (filed May 22, 2014) (Comsearch Petition to Deny Digis) at 1-2.

²⁵ Micronet Response to Petition to Deny Digis’ Application Numbers 0006242783 and 0006242860 (filed May 30, 2014) (Micronet Response) at 1, Exhibits E and G.

²⁶ Clark Letter at 2.

²⁷ Comsearch Petition to Deny at 2; Micronet Response at Exhibit L.

²⁸ Micronet Petition to Deny TXOX at 1, Exhibit B.

²⁹ Micronet Petition to Deny TXOX at Exhibit C.

coordination would be a major change from the previously licensed data and that the PCN was issued approximately 11 months after the TXOX equipment and antennas were physically removed” from the licensed site.³⁰

9. On April 16, 2014, Digis filed applications to modify Common Carrier point-to-point licenses for stations WQJL990 and WQJL989 in accordance with its PCN.³¹ In an “Unresolved Interference Explanation” appended to its applications, Digis stated that it had been unable to resolve its frequency coordination conflict with Comsearch, TXOX’s frequency coordinator.³² Digis argued that TXOX voluntarily removed its antennas and equipment from its licensed site for station WQJF811 on May 20, 2013 and had not attempted to re-coordinate or re-license any of the paths at the time of Digis’ March 10, 2014 PCN.³³

10. On May 22, 2014, Comsearch filed, on behalf of TXOX, a Petition to Deny against Digis’ applications, arguing that TXOX’s system was still operational, albeit at a slightly different location, and that TXOX’s move “across the parking lot from the original site” was minor in nature and had not required a license update.³⁴ Comsearch stated that it informed Micronet that the paths had not been forfeited and were still operational after the minor change.³⁵ Comsearch argued that Digis’ path was not properly prior coordinated in violation of Section 101.103(d) of the Commission’s rules and Digis’ applications should be dismissed or immediately amended to remove the conflicting frequencies.³⁶

11. On May 30, 2014, Micronet replied on behalf of Digis.³⁷ Micronet stated that Comsearch’s objection to Digis’ application to modify its call signs was based upon interference at TXOX’s licensed coordinates on the rooftop of the Commerce Building and that TXOX had ceased operation at that location on or before June 30, 2013.³⁸ Further, based on Digis’ observations of the Executive Building site, Micronet questioned whether station WQJF811 has been fully constructed at the Executive Building location.³⁹ Micronet also argued that it followed proper coordination procedures in filing the applications on Digis’ behalf; it alleged that both notification and response had been completed.⁴⁰

12. On June 10, 2014, TXOX filed applications to modify the licenses for Stations WQJL811, WQJY924 and WQJY925 to authorize operation at the Executive Building site.⁴¹ On June 25, 2014, Micronet, on Digis’ behalf, filed a petition to deny the aforementioned applications, arguing that

³⁰ Micronet Petition to Deny TXOX at 1, Exhibit D.

³¹ See File Nos. 0006242783 and 0006242860 (filed Apr. 16, 2014). The applications were amended on June 23, 2014, June 24, 2014, November 12, 2014, and November 13, 2014.

³² See File Nos. 0006242783 and 0006242860 (filed Apr. 16, 2014).

³³ See File Nos. 0006242783 and 0006242860, amendment, “Unresolved Case Explanation” (filed June 23, 2014).

³⁴ Comsearch Petition to Deny Digis at 1.

³⁵ Comsearch Petition to Deny Digis at 1.

³⁶ Comsearch Petition to Deny Digis at 2.

³⁷ Micronet Response.

³⁸ Micronet Response at 1.

³⁹ Micronet Response at 2.

⁴⁰ Micronet Response at 2.

⁴¹ File Nos. 0006321177, 0006321179 and 0006321186 (filed June 10, 2014).

the paths were not properly coordinated in violation of Section 101.103(d) of the Commission's rules.⁴² Micronet disputes TXOX's claim in its application that there were no unresolved interference issues.⁴³

13. On August 6, 2014, the Bureau's Broadband Division (Division) sent a letter to TXOX inquiring about the operational status of station WQJF811.⁴⁴ The Division requested that TXOX respond to the allegations made by Digis that the station is inoperable and provide documentation on the operational status of WQJF811.⁴⁵ In its September 10, 2014 response, TXOX's President, Mr. Clark, accused Micronet and Digis of unethical conduct in forcing TXOX off of the Commerce Building rooftop.⁴⁶ Mr. Clark alleged that Micronet was the frequency coordinator for both TXOX and Digis at the time TXOX's and Digis' leases expired, yet Micronet only protected the interests of Digis, by surreptitiously facilitating an exclusive agreement that allowed Digis to stay at the Commerce Building while forcing TXOX to find a new location for its equipment.⁴⁷ Upon learning of the "huge conflict of interest," Mr. Clark says TXOX fired Micronet as its frequency coordinator.⁴⁸ TXOX asks the Commission to impose penalties against Digis and Micronet for their conduct.⁴⁹ Digis denies Mr. Clark's "conspiracy theory" and states that TXOX moved its equipment voluntarily because it did not want to pay the increased lease rent for the Commerce Building rooftop.⁵⁰

III. DISCUSSION

14. While TXOX's and Digis' pleadings raise a series of issues, the dispositive issue is the validity of TXOX's license for Station WQJF811. Section 101.65(a) of the Commission's rules states:⁵¹

In addition to the provisions of § 1.955 of this chapter, a license will be automatically forfeited in whole or in part without further notice to the licensee upon the voluntary removal or alternation of the facilities, so as to render the station not operational for a period of 30 days or more.

15. On May 3, 2013, TXOX moved its "licensed links and the sleds they were attached to across the parking lot to the Executive building," approximately 500 feet from the licensed location.⁵² TXOX states that its licensed links were only out of operation for approximately four hours, and have been in "constant operation" since, "in compliance with FCC rules."⁵³

16. We find, in accordance with Section 101.65(a) of the Commission's rules,⁵⁴ that TXOX's license for Station WQJL811 automatically terminated because it voluntarily moved its equipment from

⁴² Micronet Petition to Deny TXOX.

⁴³ Micronet Petition to Deny TXOX at 1.

⁴⁴ Letter from Stephen Buenzow, Deputy Chief, Broadband Division, Wireless Telecommunications Bureau to Doug Clark, TXOX Communications LLC. (dated Aug. 6, 2014) (Operational Status Letter).

⁴⁵ Operational Status Letter at 1.

⁴⁶ Clark Letter.

⁴⁷ Clark Letter at 1-2.

⁴⁸ Clark Letter at 2.

⁴⁹ Clark Letter at 2.

⁵⁰ Blair Letter at 2.

⁵¹ 47 C.F.R. § 101.65(a).

⁵² Clark Letter at 2.

⁵³ Clark Letter at 2.

⁵⁴ 47 C.F.R. § 101.65(a).

its licensed location. By the Commission's calculation, the difference between station WQJF811's licensed location and the location requested in TXOX's modification application is 0.3 seconds in Latitude and 5.8 seconds in longitude, or .084 miles (443 feet).⁵⁵ According to the Commission's rules for microwave services, only a change from the authorized coordinates of less than five seconds of latitude or longitude is considered a minor change which can be made without prior Commission approval.⁵⁶ To be in compliance with the Commission's rules, TXOX should have filed its application for a major modification of its license prior to moving its facilities on May 3, 2013. We therefore must conclude that TXOX's license for Station WQJF811 automatically terminated on June 3, 2013, which is the first business day after thirty days after TXOX removed the equipment from the Commerce Building.

17. We emphasize that this result is legally required regardless of whether TXOX's or Digis' version of the facts is accurate. Under Commission precedent, the non-renewal of a lease is not an involuntary action.⁵⁷ Accordingly, even if it was the owner of the Commerce Building who required TXOX to remove its equipment, TXOX's move would be considered voluntary. Furthermore, even if TXOX received erroneous advice from Micronet, an applicant is responsible for and bound by the actions of its agents.⁵⁸ We do not make any finding as to whether TXOX or Digis have accurately set forth the circumstances under which TXOX moved its equipment off the Commerce Building. Furthermore, our action today is without prejudice to any civil legal remedy which TXOX or another party believes it may have as a result of these facts.

18. TXOX argues that as soon as it became aware that it would need to re-coordinate all of its licensed links following the move of its transmitter, TXOX filed with the Commission to "correct all of [its] licensed links that had been moved from the Commerce building to the Executive building."⁵⁹ Although TXOX moved its facilities on May 3, 2013,⁶⁰ TXOX did not file its modification application with the Commission for Station WQJF811 until June 10, 2014.⁶¹ By the time TXOX filed its application for modification, its license had automatically cancelled, in accordance with Section 101.65(a) of the Commission's rules.⁶²

19. Because the license for Station WQJL811 automatically cancelled as of June 3, 2013, we must dismiss the application to modify that license.⁶³ We will also dismiss the applications to modify Stations WQJY924 and WQJY925 because there is an unresolved interference conflict with earlier-coordinated and earlier-filed applications.⁶⁴ While POFS applications are not subject to petitions to deny,⁶⁵ and we must therefore dismiss the Micronet pleading as a petition to deny, we will treat the pleading as an informal objection pursuant to Section 1.41 of the Commission's rules,⁶⁶ and grant the informal objection.

⁵⁵ Section 1.947(a) of the Commission's rules requires that all major modifications, as defined in Section 1.929 of the rules, require prior Commission approval. 47 C.F.R. § 1.947(a).

⁵⁶ 47 C.F.R. § 1.929(d)(1)(i).

⁵⁷ See *Orange Crush Recycle, L.P.*, *supra*, 24 FCC Rcd at 10990 ¶ 9.

⁵⁸ See *Hillebrand Broadcasting, Inc.*, MM Docket No. 85-13, *Order*, 1 FCC Rcd 419, 420 n.6 (1986).

⁵⁹ Clark Letter at 3.

⁶⁰ Clark Letter at 2.

⁶¹ See File No. 0006321177.

⁶² See 47 C.F.R. § 101.65(a).

⁶³ File No. 0006321177.

⁶⁴ See 47 C.F.R. § 101.103(d)(1).

⁶⁵ See 47 C.F.R. § 1.933(d)(9).

⁶⁶ 47 C.F.R. § 1.41.

20. We also conclude that Digis' applications to modify its Common Carrier licenses for Stations WQJL990 and WQJL989 were properly coordinated and filed. Because TXOX's license for Station WQJL811 automatically cancelled in June 2013, Digis was not required to take that license into account in coordinating the modifications to its stations. We therefore deny TXOX's petition to deny and direct processing of Digis' applications.

IV. CONCLUSION AND ORDERING CLAUSES

21. In accordance with Section 101.65(a) of the Commission's rules, TXOX's license for Station WQJF811 automatically cancelled on June 3, 2013 because TXOX voluntarily moved its equipment from its licensed location. Therefore, we direct that the Universal Licensing System be updated to reflect that fact. We treat Digis' Petition to Deny as an informal objection, grant the informal objection, and dismiss TXOX's applications to modify the licenses for stations WQJF811, WQJY924 and WQJY925. We also deny Comsearch's Petition to Deny Digis' applications because Digis was not required to take into account the former license for Station WQJL811 and direct processing of the applications to modify the licenses for Stations WQJL990 and WQJL989.

22. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.955(a)(3) and 101.65(a) of the Commission's rules, 47 C.F.R. §§ 1.955(a)(3), 101.65(a), that the licensing staff of the Broadband Division SHALL UPDATE the Universal Licensing System to reflect that the authorization for Station WQJF811 automatically terminated on June 3, 2013.

23. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.41 and 1.939 of the Commission's rules, 47 C.F.R. §§ 1.41, 1.939, that the Petition to Deny filed by Micronet Communications, Inc. on behalf of Digis LLC on June 25, 2014 IS DISMISSED as a petition to deny and IS GRANTED as an informal objection.

24. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.934 of the Commission's Rules, 47 C.F.R. § 1.946, that the licensing staff of the Broadband Division SHALL DISMISS the applications for modification filed by TXOX Communications LLC on June 10, 2014 (File Nos. 0006321177, 0006321179 and 0006321186).

25. IT IS FURTHER ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Sections 1.41 and 1.939 of the Commission's rules, 47 C.F.R. §§ 1.41, 1.939, that the Petition to Deny filed by Comsearch on behalf of TXOX Communications LLC on May 22, 2014 IS DENIED.

26. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.934 of the Commission's Rules, 47 C.F.R. § 1.946, that the licensing staff of the Broadband Division SHALL PROCESS the applications filed by Digis LLC on April 16, 2014 (File Nos. 0006242783 and 0006242860).

27. These actions are taken pursuant to the authority delegated by Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

John J. Schauble
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau